

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600**

www.montgomerycountymd.gov/content/council/boa/index.asp

Case No. A-6305

PETITION OF ROBERT BENTON

(Hearing held January 6, 2010)

OPINION OF THE BOARD

(Effective date of Opinion, February 5, 2010)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.326(a)(1). The petitioner proposes the construction of an accessory structure/shed in the side yard that requires a variance. Section 59-C-1.326(a)(1) requires accessory structures to be located in the rear yard only.

The subject property is Lot 15, Block 9, Woodacres Subdivision, located at 5902 Cobalt Road, Bethesda, Maryland, 20816, in the R-60 Zone (Tax Account No. 00570444).

Decision of the Board: Requested variance **Granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of an 8x10 foot accessory structure/shed.
2. The petitioner testified that the topography of his lot slopes from front to rear and that the rear yard has an unusual and severe decline. The petitioner testified that the subject property's rear yard is below the basement level of the house. The petitioner testified that the basement level of his house is not visible from the front of the house, but that it is visible from the rear of the house. The petitioner testified that the grade change from front to rear is approximately 15 feet and that the neighboring lots do not share this extreme grade change. See Exhibit Nos. 4 [site plan] and 7(a) through 7(d) [photographs].

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the topography of the petitioner's lot slopes from front to rear and that the topography of the lot's rear yard drops approximately 15 feet. The Board finds that extreme and unusual topography of the subject property is peculiar to the petitioner's lot and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owner.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance request for the construction of an accessory structure/shed is the minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance to permit the construction of an accessory structure/shed in the side yard is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Carolyn J. Shawaker, seconded by Stanley B. Boyd, with Walter S. Booth, in agreement, and with Catherine G. Titus, Chair, and David K. Perdue, Vice Chair, in opposition, the Board adopted the foregoing Resolution.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 5th day of February, 2010.

Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.